

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PAUL LOUTZENHISER,

No. C-11-2925 TEH (PR)

Plaintiff,

ORDER OF SERVICE

v.

R. GROUNDS, et. al.,

Defendants.

_____ /

Plaintiff, a prisoner presently housed at the Correctional Training Facility ("CTF-Soledad") in Soledad, California, filed a pro se civil rights action under 42 U.S.C. § 1983, and the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101 et seq. ("ADA"). This action is now before the Court for initial screening pursuant to 28 U.S.C. § 1915A.

I

Plaintiff alleges the following in his complaint:
Plaintiff is a disabled individual who requires accommodation under the ADA for disabilities pertaining to his damaged lower right leg, and related lower back, hip and leg pain. Doc. 1 at 5. In 2004,

1 Plaintiff filed a civil suit against the California Department of
2 Corrections and Rehabilitation ("CDCR") and California State Prison
3 - Solano's Medical Department regarding accommodation of his
4 disability. The suit was settled and Plaintiff states that he
5 received verbal reassurances that his disability would be
6 accommodated. Plaintiff also alleges that he suffers from allergies
7 to wool, acrylic and dust, and that he had been issued a CDCR Form
8 7410 comprehensive accommodation chrono entitling him to cotton
9 bedding.

10 In January 2011, defendants D. Bright and L. Fox allegedly
11 revoked Plaintiff's Americans with Disabilities Act / Disability
12 Program placement status, refused to provide him with footwear that
13 accommodated his disability, denied him cotton bedding, and removed
14 his cane, all without justification. Doc. #1 at 5-7. Without
15 corrective footwear and a cane, Plaintiff is unable to access
16 certain prison facilities, including but not limited to the yard,
17 cafeteria, religious services, laundry, and law library, without
18 causing himself physical pain and suffering. Plaintiff alleges that
19 defendants' actions constituted deliberate indifference to his
20 serious medical needs, in violation of the Eighth Amendment, and
21 constitute discrimination in violation of the ADA.

22 II.

23
24 Federal courts must engage in a preliminary screening of
25 cases in which prisoners seek redress from a governmental entity or
26 officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).

1 In its review the Court must identify any cognizable claims, and
2 dismiss any claims that are frivolous, malicious, fail to state a
3 claim upon which relief may be granted, or seek monetary relief from
4 a defendant who is immune from such relief. Id. at 1915A(b)(1),
5 (2).

6 A.

7 To state a claim under 42 U.S.C. § 1983, a plaintiff must
8 allege two essential elements: (1) that a right secured by the
9 Constitution or laws of the United States was violated, and (2) that
10 the alleged violation was committed by a person acting under the
11 color of state law. West v. Atkins, 487 U.S. 42, 48 (1988).
12 Pleadings filed by pro se litigants, however, must be liberally
13 construed. Hebbe v. Pliler, 627 F.3d 338, 342 (9th Cir. 2010);
14 Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir.
15 1990).

16 Deliberate indifference to serious medical needs violates
17 the Eighth Amendment's proscription against cruel and unusual
18 punishment. Estelle v. Gamble, 429 U.S. 97, 104 (1976). A "serious
19 medical need" exists if the failure to treat a prisoner's condition
20 could result in further significant injury or the "unnecessary and
21 wanton infliction of pain." McGuckin v. Smith, 974 F.2d 1050, 1059
22 (9th Cir. 1992) (citing Estelle, 429 U.S. at 104), overruled in part
23 on other grounds by WMX Technologies, Inc. v. Miller, 104 F.3d 1133,
24 1136 (9th Cir. 1997) (en banc). A prison official is "deliberately
25 indifferent" if he knows that a prisoner faces a substantial risk of
26 serious harm and disregards that risk by failing to take reasonable
27

1 against by the public entity; and (4) such exclusion, denial of
2 benefits, or discrimination was by reason of the plaintiff's
3 disability. Thompson v. Davis, 295 F.3d 890, 895 (9th Cir. 2002).
4 Although Section 12132 does not expressly provide for reasonable
5 accommodations, the implementing regulations provide that "[a]
6 public entity shall make reasonable modifications in policies,
7 practices, or procedures when the modifications are necessary to
8 avoid discrimination on the basis of disability, unless the public
9 entity can demonstrate that making the modifications would
10 fundamentally alter the nature of the service, program, or
11 activity." 28 C.F.R. § 35.130(b)(7). The duty to provide
12 "reasonable accommodations" or "reasonable modifications" for
13 disabled people under Title II of the ADA arises only when a policy,
14 practice or procedure discriminates on the basis of disability.
15 Weinreich v. Los Angeles County MTA, 114 F.3d 976, 979 (9th Cir.
16 1997).

17 The problem with Plaintiff's complaint as to the ADA claim
18 is that he has not named a proper defendant. All of the named
19 defendants appear to be individuals who either evaluated
20 Loutzenhiser's medical needs or processed his inmate appeals.
21 However, individuals cannot be sued directly under the ADA. See
22 Alsbrook v. City of Maumelle, 184 F.3d 999, 1005 n.8 (8th Cir. 1999)
23 ("Title II provides disabled individuals redress for discrimination
24 by a 'public entity.' See 42 U.S.C. § 12132. That term, as it is
25 defined within the statute, does not include individuals. See 42
26 U.S.C. § 12131(1)."); see also Vinson, 288 F.3d at 1156. Therefore,
27
28

1 and copies of this order on D. Bright and L. Fox, both of whom are
2 prison officials at CTF-Soledad. The Clerk also shall serve a copy
3 of this order on Plaintiff.

4 3. To expedite the resolution of this case, the Court
5 orders as follows:

6 a. No later than ninety (90) days from the date of
7 this order, Defendants shall file a motion for summary judgment or
8 other dispositive motion. A motion for summary judgment shall be
9 supported by adequate factual documentation and shall conform in all
10 respects to Federal Rule of Civil Procedure 56, and shall include as
11 exhibits all records and incident reports stemming from the events
12 at issue. If Defendants are of the opinion that this case cannot be
13 resolved by summary judgment or other dispositive motion, they shall
14 so inform the Court prior to the date his motion is due. All papers
15 filed with the Court shall be served promptly on Plaintiff.

16 b. Plaintiff's opposition to the dispositive motion
17 shall be filed with the court and served upon Defendants no later
18 than thirty (30) days after Defendants serve Plaintiff with the
19 motion.

20 c. Plaintiff is advised that a motion for summary
21 judgment under Rule 56 of the Federal Rules of Civil Procedure will,
22 if granted, end your case. Rule 56 tells you what you must do in
23 order to oppose a motion for summary judgment. Generally, summary
24 judgment must be granted when there is no genuine issue of material
25 fact - that is, if there is no real dispute about any fact that
26 would affect the result of your case, the party who asked for
27
28

1 summary judgment is entitled to judgment as a matter of law, which
2 will end your case. When a party you are suing makes a motion for
3 summary judgment that is properly supported by declarations (or
4 other sworn testimony), you cannot simply rely on what your
5 Complaint says. Instead, you must set out specific facts in
6 declarations, depositions, answers to interrogatories, or
7 authenticated documents, as provided in Rule 56(e), that contradict
8 the facts shown in Defendants' declarations and documents and show
9 that there is a genuine issue of material fact for trial. If you do
10 not submit your own evidence in opposition, summary judgment, if
11 appropriate, may be entered against you. If summary judgment is
12 granted, your case will be dismissed and there will be no trial.
13 Rand v. Rowland, 154 F.3d 952, 962-63 (9th Cir. 1998) (en banc)
14 (App. A).

15 Plaintiff also is advised that a motion to dismiss for
16 failure to exhaust administrative remedies under 42 U.S.C.
17 § 1997e(a) will, if granted, end your case, albeit without
18 prejudice. You must "develop a record" and present it in your
19 opposition in order to dispute any "factual record" presented by the
20 Defendant in his motion to dismiss. Wyatt v. Terhune, 315 F.3d
21 1108, 1120 n.14 (9th Cir. 2003).

22 d. Defendants shall file a reply brief within
23 fifteen (15) days of the date on which Plaintiff serves them with
24 the opposition.

25 e. The motion shall be deemed submitted as of the
26 date the reply brief is due. No hearing will be held on the motion
27
28

1 unless the court so orders at a later date.

2 4. Discovery may be taken in accordance with the Federal
3 Rules of Civil Procedure. No further court order is required before
4 the parties may conduct discovery.

5 5. All communications by Plaintiff with the Court must
6 be served on Defendants, or Defendants' counsel once counsel has
7 been designated, by mailing a true copy of the document to
8 Defendants or Defendants' counsel.

9 6. It is Plaintiff's responsibility to prosecute this
10 case. Plaintiff must keep the Court and all parties informed of any
11 change of address and must comply with the Court's orders in a
12 timely fashion. Failure to do so may result in the dismissal of
13 this action pursuant to Federal Rule of Civil Procedure 41(b).

14 IT IS SO ORDERED.

15
16 DATED 02/07/2012

17 
18 _____
19 THELTON E. HENDERSON
20 United States District Judge
21
22
23
24
25
26
27
28

G:\PRO-SE\TEH\CR.11\Loutzenhiser-11-2925-osc.wpd